



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,411	09/01/2004	Emmanouil Domazakis	CFAV-4	8455
53450 7590 10/05/2009 KRIEG DEVAULT LLP ONE INDIANA SQUARE SUITE 2800 INDIANAPOLIS, IN 46204-2079				
EXAMINER				
CHAWLA, JYOTI				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
10/05/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/506,411

Applicant(s)

DOMAZAKIS, EMMANOUIL

Examiner

JYOTI CHAWLA

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission and amendments filed on August 21, 2009 have been entered. Claims 7-12 have all been amended. Claims 7-12 remain pending and are examined in the application.

Specification

Applicant's response to the new matter in the specification submitted 11/12/2008 has been considered. In the specification submitted 8/21/09 applicant claims to have arranged the previously disclosed subject matter including the original claims, according to 37 CFR 1.77(b) and makes a statement that no new matter has been entered. Applicant's specification has been received however it has not been entered once again. Applicant has not complied with the following requirements:

The amendment filed 8/21/2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The newly added material which is not supported by the original disclosure has been added to the specification under the heading "Summary of the invention", especially pages 5-6. An example is as follows: Page 5 of the newly submitted specification (of 8/21/09) includes descriptions of embodiments which was not part of the original disclosure (see submission of 8/21/09 page 5, last paragraph to end of section "Summary of Invention". For instance, Paragraph 1 on page 5 of new specification "One embodiment... comprising steps of: (a)...(f) " (New spec page 5) was not part of the original disclosure. There are other several new additions of words and phrases and embodiment features that were not part of original disclosure of 9/1/2004 and consequently add new matter to the specification.

Art Unit: 1794

The added material which is not supported by the original disclosure of 8/31/04 will not be entered. Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

Claim 11 is objected to because of the following informalities: Step c) of claim 11 recites the term "mechaniel", which appears to be a typographical error (possibly for term "mechanical". Appropriate correction is required.

Claim Rejections - 35 USC § 112(First paragraph)

Rejection of claims 7-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, made in the previous office action for terms "stably incorporated", "conventionally used" "a core temperature of" (claim 6) and "by volume" (claims 8-9) have been withdrawn based on applicant's amendments to claims dated 8/21/09.

Claim Rejections - 35 USC § 112(second paragraph)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Rejection of claims 7-12 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter made in the previous office action dated 2/18/09 have been withdrawn based on applicant's amendments dated 8/21/09.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

(A) Rejection of claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (WO 02/065860) in view of Hans Drexel (DE 10065633 A1) German document and machine translation have been withdrawn based on applicant's amendments dated 8/21/2009.

(B) Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (WO 02/065860) in view of the combination of Sonoma Sausage, Hans Drexel (DE 10065633 A1 German document and abstract), hereinafter Drexel and Maruschket et al (EP 0505797 B1), hereinafter Maruschket.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(b).

Art Unit: 1794

Regarding amended claims 7 and 10, Domazakis teaches of a method for preparing meat-based products, which is characterized by the incorporation of olive oil instead of animal fat (Page 1, line 3), and the addition of milk protein comprising the following steps:

Regarding steps (a) and (b) Domazakis teaches mixing thin-chopped (i.e., finely chopped), non-fat (i.e., fat-free) meat at a temperature of 0 °C with water at a temperature of -2°C, polyphosphoric salts, preservatives and spices (i.e., auxiliary salts). The mixture is mixed and when the temperature of the mixture is 2°C, olive oil is added (Page 3, lines 24-28). Thus, the addition of olive oil to meat as taught by Domazakis reference is done by mechanical mixing at a temperature range claimed. Therefore, it would have been obvious to one of ordinary skill at the time of the invention that Domazakis' process of addition of olive oil to meat product at applicant's recited temperature range would result in conserving the organoleptic, physical-chemical and nutritional characteristics in a manner similar to the instantly claimed invention. Applicant is reminded that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Regarding step (c), Domazakis continues mixing with simultaneous vacuum application for 3 minutes until the resulting mixture temperature rises up to 4°C (Page 3, lines 29-31), as instantly claimed.

Regarding step (e) Domazakis teaches of conveying the resulting mixture to a filling machine, where with a simultaneous vacuum is applied while encasing the mixture followed by pasteurization at 71°C (Page 3, lines 31-36), as instantly claimed.

Domazakis is silent about pasteurizing to the core temperature, however, Domazakis is

Art Unit: 1794

pasteurizing meat and olive oil composition that has been encased (sausage type food) like the applicant. Domazakis also teaches the pasteurization to the same temperature of 71°C as recited by the applicant.

Regarding step (f) Domazakis teaches moving the resulting product into a freezer unit at a maximum temperatures of -2°C to 2°C (Page3, lines 35-36), which includes applicant's recited temperature.

Thus, Domazakis teaches of the process of making the meat based product as recited in steps a) to c) and e) to f) of claim 7.

Regarding step (d) Domazakis teaches addition of milk proteins and continuing vacuum mixing until the resulting mixture temperature rises up to 4°C (Page 3, lines 26-36). Process taught by Domazakis produces pork meats with olive oil products with excellent stability (Domazakis, page 3, lines 38-43). However, Domazakis is silent as to the addition of feta type cheese and stable incorporation throughout the mixture.

However, it was known at the time of the invention that cheeses comprise milk proteins and meat products containing cheese were known at the time of the invention (e.g., Bratwurst Links with cheddar). Further, sausage products wherein soft and/ or fresh cheeses are added to the meat in order to make a low fat sausage product were also known at the time of the invention, for example Sonoma sausage of prior art which discloses sausage product comprising chicken and feta cheese (See page 1 of reference). Further, Hans Drexel, hereinafter, Drexel (Abstract) also teaches addition of soft cheeses to sausage products. Thus, sausage type foods comprising soft cheeses including feta cheese were known in the art at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method as taught by Domazakis and include a soft cheese, such as feta cheese, to the meat and olive oil mixture based on the teachings of Drexel. One would have been motivated to add feta cheese at least to provide an additional protein source and also provide flavor variety in the meat product as taught by Sonoma sausage and Drexel. One of ordinary skill would have been motivated to add feta cheese to the sausage by modifying the process of making the meat based sausage product as

Art Unit: 1794

disclosed by Domazakis (modified by Drexel), at least for the reasons of taste preference, availability and affordability of a cheese at the time the invention was made.

Regarding the addition of cheese as pieces was known at the time of the invention as disclosed by prior art of record (See EP 0505797 B1 to Maruschket, Figure 1 and English abstract). Further, addition of cheese as cheese pieces or lumps or paste would have been a matter of choice for one of ordinary skill in the art at the time of the invention. One would have been motivated to use paste if homogenous mixture of meat and cheese was desired or one would choose pieces or lumps of cheese if distinctly visible portions of meat and cheese and the physical, organoleptic and nutritional characteristics of cheese pieces are maintained, wherein the cheese pieces are detached from the surrounding meat matrix is desired in the finished sausage product. One of ordinary skill at the time of the invention would have been motivated to include cheese clumps or pieces, at least for the purpose of maintaining the distinctness of cheese pieces to provide a desirable appearance and other organoleptic properties of the finished sausage product.

Regarding claim 9, Domazakis in view of Sonoma Sausage and Drexel teaches of addition of cheese. Regarding the amount of cheese Drexel teaches that the amount of cheese can be varied from 10-75 % by weight based on the weight of meat (Abstract and translation page 1, paragraph 1), which includes applicants recited range of 2-25%. Regarding the proportions being measured by volume, it is noted that the applicant has not disclosed that the measures are by volume in the specification (See 112 (first)). Further the applicant fails to establish any criticality of the proportions and their measurement by volume in the disclosure. Therefore, it would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention to further modify Domazakis, in view of Drexel and add the amount of cheese in the range of 10-75% based on the weight of meat. One would have been motivated to include a cheese in amount as taught by Drexel at least for the purpose of achieving a meat and oil emulsion have desired organoleptic properties.

It is noted that varying relative amounts of meat, cheese and oil, based on the

Art Unit: 1794

optimal color, texture, creaminess, flavor, protein and fat content desired would not have involved an inventive step, and thus, does not provide patentable distinction to the claims. Thus, the claimed invention would have been obvious over the combination of Domazakis and Drexel, absent any clear and convincing evidence and/or arguments to the contrary. Further, applicant's attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. In *re Benjamin D. White*, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In *re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

Regarding amended claims 11 and 12, see the rejection of claims 7 and 10. Claim 11 differs from claim 7 by elimination of the step of addition of olive oil, however, since the method as instantly claimed is a method comprising the steps, thus the reference still teaches of the process as recited in claim 11. Thus, claim 11 is rejected for the same reasons as discussed regarding the rejection of claim 7 above.

(C) Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (WO 02/065860) in view of the combination of Sonoma Sausage, Drexel and Maruschket, as applied to claim 7 above, further in view of Helmer et al (US 3309204), hereinafter Helmer.

Domazakis in view of the combination of Sonoma Sausage, Drexel and Maruschket has been applied in an obviousness type rejection under 35 USC 103(a) to claim 7 above.

Regarding claim 8, Domazakis teaches of addition of olive oil. Addition of olive oil to meat is done for maximum possible substitution of animal fat (Domazakis, page 3, lines 10-15). Domazakis also teaches that the meat and olive oil products are produced by a process (as discussed regarding claim 7) wherein the products have excellent stability. Domazakis further teaches of direct frost embodiment of olive oil and maximum possible substitution of animal fat (Page 3, lines 10-15). However the reference is silent about specific amounts in which olive oil could be incorporated in the final meat product. It is noted that addition of varying amounts of vegetable oils and fats in sausage products for the purpose of modifying the fat content and caloric value was known in the art at the time of the invention. Helmer teaches that 3-30% of vegetable oils including olive oil (Column 5, line 57-59) can be added to make improved sausage products. Helmer also teaches that sausages with vegetable oils in the range of 3-30% and preferably 10% results in production of stable sausage emulsion, which upon further processing is free from emulsion breakdown, surface grease accumulation and "fat caps" in the sausage product (See Helmer Column 2, lines 4 to 25). Thus, sausage products with olive oil in the recited range of the applicant were known to produce stable meat emulsions (as taught by Helmer). Therefore, it would have been a matter of routine obvious to one of ordinary skill in the art at the time of the invention to modify Domazakis in view of Helmer and include olive oil in the meat based products in the range as taught by Helmer. One of ordinary skill in the art at the time of the invention would have been motivated to include olive oil to the sausage product in Helmer's recommended range at least for the purpose of obtaining a stable meat and oil emulsion that is free from emulsion breakdown, surface grease accumulation and "fat caps" in the sausage product (See Helmer, Column 2, lines 5-25).

Double Patenting

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 1794

I) Claims 7-12 of current application are rejected on the ground of provisional nonstatutory obviousness-type double patenting as being unpatentable over claims 6-10 and 12 of copending Application No.10/506,417, as discussed in previous office action of 2/18/09.

Applicant's remarks regarding the double patenting rejection have been considered, however, new limitations of addition of feta cheese pieces and mixing to achieve stable emulsified product (of current application '411) have also been incorporated in the currently pending claims of application '417. Thus, the reasons provided in the previous office action still remain and rejection of claims 7-12 on the ground of provisional nonstatutory obviousness-type double patenting as being unpatentable over claims 6-10 and 12 of copending Application No.10/506,417 is maintained for the reasons of record.

II) Applicant has presented no argument regarding the provisional nonstatutory obviousness-type double patenting rejection of claims 7-10 over claims 1-2 of U. S. Patent No. 7026007 B2 is that U. S. 7026007. The obviousness-type double patenting rejection made in the previous office action is still deemed proper and maintained for reasons of record.

Response to Arguments

Applicant's remarks about specification have been considered and responded in the office action above.

Applicant's arguments dated 8/21/2009 with respect to claims 7-12 over Domazakis in view of combination of references have been considered but are moot in view of new grounds of rejection.

i) Applicant's remarks dated 8/21/2009, specifically directed to Domazakis where applicant alleges that Domazakis has used "milk protein" as an extra emulsifying /stabilizing factor, whereas by direct contrast, the feta cheese pieces of the present application constitutes a decidedly de-stabilizing factor. (See remarks, pages 7-8, paragraph 1). In response to applicant's arguments against the references individually,

Art Unit: 1794

one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case Sonoma sausage, Hans Drexel and Maruschket teach the sausage product with feta cheese, as discussed above and in the previous office action.

ii) Further, in response to applicant's argument that "current application provides a technological solution that allows the stable incorporation of two destabilizing factors: olive oil and feta cheese" (Remarks, page 7, lines 1-5), it is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

iii) Applicant's argument that Domazakis does not teach the invention as claimed because "vegetable proteins and starch are absent from the present invention's meat based system" (Remarks, page 8, lines 2-3). Applicant also argues that in combination of Domazakis and Drexel "Milk powder and milk protein powder additives, starch and vegetable proteins of Domazakis and Drexel are not used in the present invention". In response the applicant is referred to language of independent claims 7 and 11, where both recite "A method for preparing meat- based products... comprising", which is an open ended claim wherein the process of making meat based product can have added steps and added ingredients. Thus, applicant's argument that Domazakis and Drexel do not teach the invention as claimed because they incorporate ingredients that are not recited in the claims of the invention, is not persuasive.

iv) Applicant's argument that "Applicant does provide technological solution regarding the stable incorporation of two destabilizing factors", which are olive oil and feta cheese pieces of the present application (Remarks, page 7, first 6 lines). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., Stable

Art Unit: 1794

incorporation of olive oil and feta cheese pieces, which are two destabilizing factors) is not recited in the rejected claim(s) as such. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments filed 8/21/09 regarding the rejection of claims 7-12 over Domazakis in view of Drexel have been fully considered but they are not persuasive. Claims 7-12 remain rejected as discussed in the office action above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jyoti Chawla
Examiner
Art Unit 1794

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1794